

### **REMARKS/ARGUMENTS**

This Request for Continued Examination and preliminary amendment is submitted in response to the Office Action dated January 11, 2006; the Examiner's answer dated November 17, 2006 and the Decision on Appeal dated August 28, 2007. After entry of this amendment, claims 3-21 will continue to be pending in the application. Claims 3 and 9 have been amended. Support for this amendment can be found on page 4, line 31-page 5 line 5. Reconsideration and allowance is respectfully requested in view of the remarks made below.

#### **1. The Rejections under 35 U.S.C. §103(a)**

Claims 3-21 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,887,739 to Prevot et al. (hereinafter "Prevot") in view of U.S. Patent No. 5,908,128 in view of Krishnakumar et al. (hereinafter "Krishnakumar").

"To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)." See MPEP 2143.03.

Prevot discloses a dome for a wide-mouth plastic container that can withstand pressure from top loading without distortion. Prevot also discloses that the dome can be suitable for hot fill processing. Prevot does not teach that the dome is suitable for pasteurization.

Krishnakumar discloses a non wide-mouth container that is claimed to be suitable to pasteurization, having hoop ribs (137 and 139) in the areas above and below the panels on the body portion of the container.

Claims 3 and 9, as newly amended, require having three or more continuous peripheral vertically-spaced grooves. This groove construction permits the accommodation of the changes in volume and pressure. See Page 5, lines 3-5 of the Specification. This structure helps accommodate both the super-baric and sub-baric pressure and changes resulting from the cool down of the container to ambient temperature. See Page 6, lines 3-9. The structure that exists in the Applicant's container goes to assisting in the multi-step process that is claimed in the methods so that the structure of the container is retained. The container in the present invention goes through a hot fill process and a pasteurization process. The container is filled a higher temperature and pasteurized at a still higher temperature. This puts additional stress on the container that is not accounted for in the containers of either Prevot or Krishnakumar.

Prevot does not disclose having a sidewall with three or more continuous peripheral vertically-spaced grooves. Additionally, Krishnakumar does not disclose having sidewall with three or more continuous peripheral vertically-spaced grooves. For at least this reason, a *prima facie* case for obviousness cannot be established with respect to claims 3 and 9.

Furthermore, Prevot only discusses a step of hot-filling a container. Krishnakumar only discusses pasteurizing. Neither Prevot nor Krishnakumar contemplate performing both hot-filling and pasteurization. Therefore, while performing one or the other process may be done there is no suggestion or motivation of performing both processes with the container in order to result in a finished packaged product. There is no suggestion of modifying a container to accommodate the stresses that would occur from performing not just one but both processes.

Therefore the Applicant respectfully submits that independent claims 3 and 9 are in condition for allowance. Furthermore, claims 2-8 and 10-21 are in condition for allowance by virtue of their dependence upon an allowable base claim.

## **2. Conclusion**

Applicant has made an earnest effort to place this application in condition for allowance. If the Examiner feels that a telephone interview would expedite prosecution of this patent application, he or she is respectfully invited to telephone the undersigned at 215-599-0600.

Contact with the undersigned via electronic mail at [takupstas@patentwise.com](mailto:takupstas@patentwise.com) is hereby authorized<sup>1</sup> per MPEP 502.03.

Respectfully submitted,

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<sup>1</sup> Recognizing that Internet communications are not secure, I hereby authorize the USPTO to communicate with me concerning any subject matter of this application by electronic mail. I understand that a copy of these communications will be made of record in the application file.